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10/760,147

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12/23/2009

EXAMINER

NGUYEN, TRINH T

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/760,147	Applicant(s) WECHSLER, LAWRENCE I.	
	Examiner Trinh T. Nguyen	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Amend. dated 8/31/09.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17 and 21-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17, 21, 22, 39, 41, 42 is/are rejected.
- 7) ☒ Claim(s) 23-25, 28-38 and 40 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 17,21-25,28-39,41,42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 17,21,39,41, the phrases "less likely" and "more likely", are confusing since it is unclear as to what the phrases "less likely" and "more likely" defines and/or intends to be encompassed.

In claims 23 and 24, the phrase "at least partially" is confusing since it is unclear as to what the term "partially" defines and/or implies.

In claim 24, the phrase "is disposed axially inwardly of an axially outermost portion of said shielding portion in a direction of said toy axis" is confusing and not clearly understood as written.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 17,21,22,39,41, and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Axelrod (US 4924811).

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For claim 17, Axelrod teaches a method of inhibiting user hand contact with animal saliva deposited on a play toy during interactive play by the animal and the user, comprising:

providing the toy with an animal access region (40) readily available to a mouth of the animal for gripping thereby;

providing the toy with an animal restricted region (36) which is less likely to be accessed by the mouth of the animal than said animal access region, said animal restricted region being hand-holdable by the user;

presenting the toy to the animal during the interactive play; and

handling the toy by holding said animal restricted region (36) in the hand of the user following gripping of the animal access region in the mouth of the animal (see Figure 7).

For claim 21, Axelrod teaches a method of inhibiting human user hand contact with pet saliva of a pet deposited on a play toy during interactive play by the pet and the user, comprising:

providing the toy with an animal access region (40) and an animal restricted region (36), said animal access region being comprised of at least one portion of the toy which the pet is more likely to bite and hold in a mouth of the pet by virtue of at least one of enhanced sensory attraction or greater relative physical accessibility to the pet than said animal restricted region, said animal restricted region being comprised of at least another portion of the toy which is conversely less likely to be accessed by the pet during play by reason of at least one of less sensory appeal or structural inaccessibility

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to the pet than said animal access region, such that saliva of the pet is deposited to at least a lesser degree on said toy within said animal restricted region as compared to said animal access region when the toy is naturally picked up in the mouth of the pet; and

handling the toy following said toy being picked up in the mouth of the pet by grasping of the animal restricted region (36) by the user such that contact with saliva by the user is inhibited (see Figure 7).

For claim 22, Axelrod teaches said providing includes creating the animal restricted region by providing shielding structure (38) which physically deters the pet from accessing said animal restricted region from access by the mouth of the pet, yet is configured to allow at least the hand of the human user to access the animal restricted region.

For claim 39, Axelrod teaches method of inhibiting human user hand contact with pet saliva of a pet deposited on a play toy during interactive play by the pet and the user, comprising:

providing the toy with an animal access region (16,18,40) and an animal restricted region (36 and/or the region between members 12 and 14 of Figure 6), said animal access region being comprised of at least one portion of the toy which the dog is more likely to bite and hold in a mouth of the pet by virtue of at least one of enhanced sensory attraction or greater relative physical accessibility to the pet than said animal restricted region, said animal restricted region being comprised of at least another portion of the toy which is conversely less likely to be accessed by the pet during play

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than said animal access region by reason of at least one of less sensory appeal or structural inaccessibility to the pet than said animal access region;

allowing the pet to pick up the toy by gripping a naturally-accessed portion of the toy in the mouth of the pet while the toy is free of the hand of the user (see Figure 6); and

acquiring the toy by the user following the gripping of the toy in the mouth of the pet by grasping at least a portion of said animal restricted region by the hand of the user (see Figure 7).

For claim 41, Axelrod teaches A method of reducing human user hand exposure to pet saliva of a pet deposited on a play toy during interactive play by the pet and the user, comprising: providing the toy with an animal access region (40) and an animal restricted region (36), said animal access region being comprised of at least one portion of the toy which the pet is more likely to bite and hold in a mouth of the pet by virtue of at least one of enhanced sensory attraction or greater relative physical accessibility to the pet than said animal restricted region, said animal restricted region being comprised of at least another portion of the toy which is conversely less likely to be accessed by the pet during play by reason of at least one of less sensory appeal or structural inaccessibility to the pet than said animal access region, such that saliva of the pet is deposited to at least a lesser degree on said toy within said animal restricted region as compared to said animal access region when the toy is picked up in the mouth of the pet by a portion of the toy freely selected by the pet; and

handling the toy following said toy being picked up in the mouth of the pet by grasping of the animal restricted region by the user such that exposure to saliva by the hand of the user is reduced (see Figure 7).

For claim 42, Axelrod teaches said providing includes creating the animal restricted region by providing shielding structure (38) which physically deters the pet from accessing said animal restricted region from access by the mouth of the pet, yet is configured to allow the hand of the human user to access the animal restricted region.

Response to Arguments

5. Applicant's arguments on 8/31/09 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

6. Claims 23-25,28-38 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

7. Claim 40 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-6906. The examiner can normally be reached on M-F (1:30 P.M to 10:00 P.M).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on (571) 272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Trinh T Nguyen/
Primary Examiner, Art Unit 3644
12/20/09